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February 14, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 19, 2005

Case Number: TSO-0288

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual works for a DOE contractor in a position that requires him to hold a DOE security clearance. Until the DOE suspended the individual's security clearance in 2005, the individual had held a security clearance for 22 years. For most of those 22 years, however, the LSO had monitored the individual's finances, meeting with him when necessary to discuss financial issues that raised concerns to the agency. During the individual's employment tenure, the LSO conducted six personnel security interviews with the individual (Exhibits 70-75), issued one Letter of Interrogatory (LOI) to him (Ex. 20) and provided a Special Security Lecture (SSL) to him (Ex. 19), all in an effort to gain assurances that the individual had properly addressed financial problems that had come to the attention of the LSO.

In July 2003, the individual filed a voluntary Petition for Bankruptcy under Chapter 13 of the United States Bankruptcy Code. Ex. 50. The following month, a Bankruptcy Court confirmed a Chapter 13 Bankruptcy Plan which established the schedule pursuant to which the individual would repay his creditors. *Id.* In May 2004, the Chapter 13 Trustee filed a Motion to Dismiss the bankruptcy petition on the basis that the individual had failed to make timely payments under the Chapter 13 Bankruptcy Plan. Ex. 40. On

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

September 2, 2004, the Bankruptcy Court granted the Chapter 13 Trustee's motion and dismissed the individual's bankruptcy petition. Ex. 39. The following month, October 2004, the individual filed another Chapter 13 Petition for Bankruptcy. *Id.* That case is currently pending in the Bankruptcy Court with jurisdiction over the matter.

In July 2005, the LSO initiated formal administrative review proceedings when it informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections f and l (Criteria F and L respectively).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations and requested an administrative review hearing. On August 26, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, three witnesses testified. The LSO presented the testimony of one witness. The individual presented his own testimony and that of one other witness. The LSO submitted 75 exhibits into the record; the individual tendered eight exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the

² Criterion F concerns information that a person has "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8(f). Criterion L relates, in relevant part, to information that a person has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . ." 10 C.F.R. § 710.8 (l). Such conduct or circumstances for purposes of Criterion L include, but are not limited to, a pattern of financial irresponsibility.

side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. Findings of Fact

The record in this case is confusing because there appears to be (1) unresolved conflicts between credit reports and bankruptcy documents listing creditors and the amounts owed by the individual to those creditors; (2) possible corporate name changes for some of the individual’s creditors; (3) possible assignments of some of the individual’s debts from creditors to collection companies; (4) possible purchases of some of the individual’s debts by factoring companies; and (5) multiple amendments and changes to the individual’s bankruptcy schedules of assets and liabilities. This confusion, combined with a voluminous record, presented a challenge to determining the accurate facts in this case. The findings of fact as set forth below are based on my evaluation of the entire record in this case, with special emphasis given to the testimonial evidence presented at the hearing and the documentary evidence submitted into the record by the Bankruptcy Counsel for the individual.

The individual’s apparent difficulty managing his finances first came to the attention of the LSO during a routine background investigation in 1983 when the LSO discovered that two of the individual’s creditors had “charged off” approximately \$850 of his debt and that \$300 of the individual’s debt had gone to collection. Ex. 17. The LSO provided a Special Security Lecture (SSL) to the individual to emphasize the importance of financial responsibility. *Id.*

In 1991 a routine background reinvestigation of the individual uncovered additional irregularities in the individual’s finances. Ex. 16. To address the concerns associated with this potentially derogatory information, the LSO conducted a Personnel Security

Interview (PSI) in 1992 (PSI #1). During PSI #1, the individual revealed that his financial plight was caused by two periods of loss of employment: one for one month because of a work-related injury³ and the second for 10 weeks due to a union strike.⁴ Ex. 75 at 25-36. The individual's explanations apparently resolved the LSO's security concerns at this point.

In 1992, the individual was injured on the job again and was out of work for one and one-half years. Transcript of Hearing (Tr.) at 88. During this period, the individual claimed that he received only two thirds of his wages and lost overtime pay. *Id.* at 89. Even though his wife returned to work, the wife's income did not bridge the gap between his pre-injury wages and overtime and his post-injury wages and overtime. *Id.* Sometime in 1992, the individual's car experienced mechanical problems and he did not have the money to fix it. Ex. 74 at 17. The individual claimed that he returned the car to the dealership and agreed to a wage garnishment of \$242 biweekly to settle the debt to the dealership. *Id.* Around this same time, the individual owed \$1200 to a collection company and \$1000 to the Internal Revenue Service (IRS). *Id.* at 19-25; Ex. 15. The LSO conducted a second PSI with the individual in 1995 (PSI #2) to discuss these matters. Ex. 74. The individual apparently mitigated any security concerns associated with his finances during the PSI #2. Ex. 15.

In 1995, the individual and his wife started a restaurant in a house that he and his wife owned. Tr. at 89. The individual related that he invested much time and money in the business but it failed because of its location. *Id.* at 90. Undeterred by this failure, the individual moved his restaurant to a different venue. *Id.* The individual testified that he needed to buy new equipment and make repairs to the new restaurant location. *Id.* Later, he moved the restaurant to a different location but this location required him to put a new roof on the property and to address septic problems. *Id.* By 1998, the individual realized that the restaurant would not remain viable. *Id.* At the hearing, the individual estimated that he lost between \$15,000 and \$20,000 on this failed business venture. *Id.*⁵ On May 16, 1995, the individual completed and executed a Questionnaire for Sensitive Positions (QSP) in which he responded negatively to the question whether he had any delinquent financial obligations over 180 days. Ex. 35.

On January 31, 1997, the individual completed and executed a Questionnaire for National Security Positions (QNSP). On that form, the individual responded affirmatively to the question whether he had ever had his wages garnished or any property repossessed. Ex. 34. To follow-up on this matter, the LSO sent the individual a LOI in 1997 in which it asked for more detailed information relating to the individual's wage garnishment and collection accounts. Ex. 20. The individual provided the LSO with the information requested and the LSO continued the individual's security clearance.

³ The individual did admit during the 1992 PSI that he received workers compensation during the time that he was recovering from his work-related injury. Ex. 75 at 40.

⁴ At the hearing, the individual revealed that he did receive income during the strike but the income was less than what he would have received had he been working. Transcript of Hearing (Tr.) at 87.

⁵ The individual never revealed to the LSO that his failed restaurant venture contributed in any way to his financial difficulties.

On February 22, 1998, the individual completed and executed another QNSP wherein he revealed that he had paid off a garnishment totaling \$4,866.94 but still owed a credit union approximately \$3,000. Ex. 33. According to the individual, his daughter went to college in another state in 1998 and his wife moved to that other state for three months to assist his daughter assimilate into college life. Tr. at 91. The individual claimed at the hearing that he incurred unexpected expenses associated with his wife's three-month visit. *Id.*

One year later on February 12, 1999, the individual disclosed on his QNSP that he had no outstanding financial issues. Ex. 32. He only noted on that security form that he had paid in full a garnishment in the amount of \$4,866.94. The following year on February 13, 2000, the individual completed another QNSP and revealed the above-referenced garnishment as "paid in full." Ex. 31. On December 14, 2000, the individual completed a QNSP and responded negatively to question #27 (b), "In the last 7 years, have you ever had your wages garnished or had any property repossessed for any reason?" Ex. 30. On January 10, 2001, the individual responded affirmatively to question #27(b) on the QNSP and listed a garnishment of \$4,866.94.

In 2001, the individual underwent another routine background investigation. As part of the investigation, the LSO obtained a credit report on the individual. The credit report revealed \$4300 in judgments against the individual, 11 collection accounts, two "charged off" accounts totaling \$13,121 and a voluntary automobile repossession in 2000. When the LSO compared this information to the QNSPs completed by the individual in 1998, 1999, 2000 and 2001 it realized that the individual had failed to disclose most of these financial issues to the DOE. To address this matter, the LSO conducted its third PSI with the individual in 2001 (PSI #3).

During PSI #3, the individual apologized for failing to list his financial delinquencies on his most recent QNSP. He stated that he "overlooked it." Ex. 73 at 13. Later in the interview, the individual claimed that he "misunderstood the question." *Id.* at 44-45. The individual also related during the subject PSI that he allowed his van to be voluntarily repossessed because he "just couldn't afford it anymore." *Id.* at 13-14. In addition, he stated that some of his financial difficulties stemmed from his brother to whom he had given a truck with the understanding that the brother would continue making the truck payments. *Id.* at 21. The brother did not make the truck payments. *Id.* The individual told the Personnel Security Specialist that he believed that he could live within his means but needed to learn how to better manage his money. *Id.* at 42-43. The LSO required the individual to sign a "Certification to Provide Information" in which he agreed to contact all his creditors and inquire about the status of his outstanding accounts. Ex. 73, attachment. The individual assured the Personnel Security Specialist that he would satisfy the debts that appeared on his credit report and provided a copy of the letters that he wrote to his creditors pursuant to the "Certification to Provide Information." Ex. 8.

In 2002, the LSO received three incident reports relating to the individual's financial affairs. On June 13, 2002, the individual informed the LSO in writing that a writ of garnishment had been filed against his wages. Ex. 24. He advised the LSO that he was "making arrangements to pay [the] debt." *Id.* On June 19, 2002, the individual informed

the LSO in writing that a Complaint for Foreclosure had been filed against him in court. Ex. 25. The individual advised the LSO that he was “applying for hardship withdrawal from his 401k plan” to address this issue. *Id.* On August 1, 2002, the individual informed the LSO in writing that a writ of garnishment had been filed against him in court. Ex. 23. The LSO immediately scheduled a PSI with the individual.

During the 2002 PSI (PSI #4), the individual explained that he could not make his car payments so the car dealership garnished his wages until he repaid approximately \$6,000. Ex. 72 at 5. He also stated that he had experienced some financial hardships in his family that left him unable to pay his mortgage. *Id.* at 8-11. He withdrew \$10,000 from his retirement account to pay down a portion of his overdue mortgage payments. Ex. 7. During PSI #4, the LSO noted that a 2002 credit report listed past due or collection accounts in the amount of \$25,772 in addition to the \$100,000 mortgage and car repossession. *Id.* The individual told the LSO that he wanted to pay his bills and would set up payment plans with his creditors or pay the accounts in full. According to the record, the individual provided the LSO with all the information that it requested to show that he was attempting to pay his creditors. Ex. 6.

In July 2003, the individual filed a Chapter 13 Bankruptcy Petition. Ex. 40. The individual testified that he had shoulder surgery in 2003 and lost three months of overtime pay during this period. Tr. at 91. The Bankruptcy Court approved a plan whereby the individual agreed to pay \$1405 per month to the Chapter 13 Trustee for a period of three years. Ex. 71 at 7. On April 22, 2004, the LSO conducted another PSI (PSI #5) with the individual to address the individual’s bankruptcy filing. *Id.* According to a Case Evaluation Sheet relating to PSI #5, the LSO determined that the individual’s access authorization was not affected by his Chapter 13 filing, and noted that “updated court documentation reflects that [the individual] is meeting the requirements of his payment plan.” Ex. 5. The court documentation upon which the LSO relied in making this determination must not have been current because one month after PSI #5, the Chapter 13 Bankruptcy Trustee filed a Motion to Dismiss the individual’s Bankruptcy Petition on the grounds that the individual had “defaulted in the plan payments for about 3 months.” Ex. 40. The Bankruptcy Court granted the Trustee’s motion and dismissed the Chapter 13 Bankruptcy Petition on September 2, 2004. Ex. 39.

On October 21, 2004, the individual filed another Chapter 13 Bankruptcy Petition. *Id.* In February 2005, the LSO conducted its sixth PSI (PSI #6) with the individual. During this PSI, the individual told the LSO that he had not received any credit counseling prior to filing his Bankruptcy Petition. Ex. 70 at 35. He also told the LSO that he had fallen behind on his bills when his wife and daughter had become ill. *Id.* at 9. The individual did not reveal with specificity why his financial condition had deteriorated despite probing questions posed by the LSO during PSI #6.

According to the terms of the individual’s most recent Chapter 13 Bankruptcy Plan, the individual is required to pay \$2,860 each month to the Chapter 13 Trustee who, in turn, will distribute the money to the individual’s creditors. Exhibits D and H. A Bankruptcy Court Order reflects that the individual began tendering his monthly payments to the Bankruptcy Trustee on November 25, 2004 and is projected to make his final payment to the Bankruptcy Trustee in January 2009. *Id.*

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁶ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites two potentially disqualifying criteria as bases for suspending the individual's security clearance, *i.e.*, Criteria F and L.

With regard to Criterion F, the LSO alleges that the individual misrepresented, falsified, or omitted significant information regarding his financial delinquencies on nine security forms⁷ that he completed between 1995 and 2004. From a security standpoint, false statements made by a person in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the person can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. TSO-0052), <http://www.oha.doe.gov/cases/security/tso0052.pdf>; *Personnel Security Hearing* (Case No. TSO-0024), <http://www.oha.doe.gov/cases/security/tso0024.pdf>; *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 82,823 (1999), *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

As for Criterion L, the LSO alleges that the individual "has established a progressive pattern of deliberate financial irresponsibility and has shown an unwillingness or inability to satisfy debts despite five⁸ personnel security interviews (PSI), a letter of interrogatory (LOI), and a special security lecture (SSL) addressing extensive financial problems."

⁶ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

⁷ The nine forms in question are the following: a QSP dated May 15, 1995, a QNSP dated January 31, 1997, a QNSP dated February 22, 1998, a QNSP dated February 12, 1999, a QNSP dated February 13, 2000, a QNSP dated December 14, 2000 (this form is erroneously referred to in the Notification Letter as a February 14, 2000 QNSP), a QNSP dated February 17, 2002, a QNSP dated February 10, 2003 and a QNSP dated February 18, 2004. *See* Exhibits 35, 34, 33, 32, 31, 30, 28, 27 and 26 respectively.

⁸ As noted in Section III, the LSO conducted six PSIs with the individual to discuss his finances.

Notification Letter at 1. In addition, the LSO claims that the individual's current financial plight is underscored by his 2004 bankruptcy filing in which he listed liabilities of \$216,504, \$32,176 of which are for back taxes.⁹ Finally, the LSO alleges that a credit report dated February 11, 2005 reflects that the individual had incurred an additional \$21,183 of delinquent debt that was not included in his bankruptcy filing.

The individual's failure to live within his means, to satisfy his debts and meet his financial obligations is a security concern because these actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See* Amended Adjudicative Guidelines to 10 C.F.R. Part 710, Guideline F, entitled "Financial Considerations" set forth at <http://www.fas.org/sgp/isoo/guidelines.pdf>. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* Another security concern arises not from the individual's bankruptcy filing *per se*, but rather from the circumstances surrounding a person's bankruptcy and his or her attendant financial problems. *See Personnel Security Hearing* (Case No. VSO-0509), <http://www.oha.doe.gov/cases/security/vso0509.pdf>; *Personnel Security Hearing* (Case No. VSO-0414), 28 DOE ¶ 82,794 (2001); *aff'd*, 28 DOE ¶ 83,025 (2001) (affirmed by OSA, 2001). When reviewing the access authorization of a person who has filed for bankruptcy relief, I must focus on how the person reached the point at which it became necessary for him or her to seek the help of the bankruptcy court in order to regain control of his or her financial situation through the legal discharge of his or her debts. *See Personnel Security Hearing* (Case No. VSO-0288), 27 DOE ¶ 82,826 (1999), *aff'd*, 28 DOE ¶ 83,004 (2000) (affirmed by OSA, 2000). Finally, the LSO's concerns regarding the individual's purported failure to include \$21,183 in pre-petition debt in his Bankruptcy Petition would have raised a security concern about the individual's honesty, reliability and trustworthiness had the facts, as alleged, been accurate. At the hearing, the individual's Bankruptcy Counsel provided compelling testimony and detailed financial evidence to demonstrate that the individual had included the pre-petition debt at issue in the Notification Letter in his Bankruptcy Petition. Based on the convincing new evidence tendered at the hearing, I dismissed a portion of the Notification Letter. Specifically, I dismissed the last sentence in paragraph two of Part II of the Notification Letter which read: "Moreover, a credit report dated February 11, 2005 reflects an additional \$21,183 of delinquent debt that was not included in his bankruptcy."¹⁰

B. Criterion F

As noted above, the LSO alleges that the individual deliberately falsified responses regarding his financial situation on nine separate security forms. To mitigate the LSO's concerns, the individual testified that he never attempted to mislead the DOE about his financial condition. Tr. at 102. He added, "I didn't deliberately lie, I haven't had any

⁹ At the hearing, the individual's Bankruptcy Counsel provided updated documentation which shows that the individual's income tax liability is approximately \$60,000, not \$32,176. Ex. G.

¹⁰ The DOE Counsel raised no objection at the hearing to the dismissal referenced above.

counseling on money management and I want to get into something like that to be sure nothing happens again like this.” *Id.* at 103.

After carefully reviewing the evidence, I determined that some of the individual’s omissions on his security forms were inadvertent. Specifically, I found that the individual’s omission of two debts on his May 1995 QSP was not deliberate. The individual’s responses to the inquiries made of him during PSI # 3 convinced me that the individual simply “overlooked” the two debts in question. Ex. 74 at 28.

With regard to the individual’s failure to disclose his substantial tax liability to the LSO on five QNSPs between January 1997 and December 2000, I find the individual’s actions to be deliberate. With the exception of the February 22, 1998 QNSP where the individual revealed a \$3000 debt to a credit bureau, the individual did not list any outstanding debt on his four other QNSPs. During PSI #3, the individual claims that “he overlooked other financial delinquencies, including State income taxes in the amount of \$1,000.” Ex. 73 at 13, Ex. 15. According to bankruptcy documentation tendered during the hearing, the individual was assessed back taxes by the IRS in November 1998 in the amount of \$1376 and \$8437 in back taxes in June 1998. Ex. G. The individual did not offer any explanation at the hearing for his failure to disclose these tax delinquencies to the LSO. While I can understand how the individual may have negligently failed to list some of the debts discussed during PSI #3, the individual did not convince me that he overlooked his delinquent back taxes when he completed his security forms. From my perspective, the aggregate sum of \$9,813 is not so insignificant that one would “forget” he or she had an outstanding tax liability. I therefore find that the individual has not brought forth convincing, credible evidence to mitigate the DOE security concern that he deliberately omitted significant information on the QNSPs that he executed on February 12, 1999, February 13, 2000 and December 14, 2000.

Similarly, the individual failed to convince me that he did not deliberately falsify his February 17, 2002 QNSP, his February 10, 2003 QNSP and his February 18, 2004 QNSP when he failed to disclose the tax delinquencies totaling \$9,813, plus interest that the IRS assessed against him in 1998 and 1999.¹¹

For the reasons discussed above, I find that the individual has not mitigated all of the security concerns associated with the Criterion F in this case.

C. Criterion L

To mitigate the LSO’s concerns about the individual’s inability to satisfy his debts over a period of 22 years, the individual offered several explanations why he had difficulty managing his finances. Among the reasons cited by the individual are the following: (1) two work-related injuries, one in 1985 (Ex. 75 at 34), and one in 1992 (Tr. at 88); (2) a 10-week work strike in 1989 (*Id.* at 87); (3) money expended to help his daughter when

¹¹ Exhibit G shows that the IRS assessed the individual with delinquent income taxes in the aggregate principal amount of \$24,295.51 in 2004 for the tax years 1997 through 2003. Since the assessments at issue were made after February 18, 2004, the date of the individual’s most recent QNSP, I find that the individual did not fail to disclose the additional \$24,295.51 plus interest on any of his QNSPs.

she broke up with her boyfriend (Ex. 72 at 8, 57); (4) money spent in 1998 in connection with his other daughter's assimilation into college (Tr. at 91); (5) a debt attributed to him when his brother failed to make car payments on a vehicle given by the individual to his brother (Ex. 73 at 21); (6) a poor business investment that generated \$15,000 to \$20,000 in losses between 1995 and 1998 (Tr. at 89-90); (7) the loss of overtime when his wife and daughter became ill sometime prior to 2003 (Ex. 5)¹²; and (8) a three month loss of overtime when the individual sustained a shoulder injury in 2003.

In evaluating the explanations advanced by the individual to mitigate Criterion L, I determined that some of the circumstances that caused his financial plight were largely beyond his control. Specifically, the work strike in 1989 and the work-related injuries in 1985 and 1992 understandably adversely affected the individual's ability to remain current on his bills. I also found there to be no evidence in the record that the individual and his wife engaged in frivolous spending. While these two factors can be viewed as mitigating factors, the weight of the evidence in this case suggests that the individual bore considerable responsibility for his financial woes.

From the record, it appears that the individual relied too much on receiving overtime to pay his basic living expenses so that whenever an unforeseen event such as an injury, a work strike, or a family illness interfered with the individual's ability to work overtime, he slipped into debt. It is unfortunate that the individual never sought financial counseling to assist him in managing his money more wisely. The individual recognized in 2001 that he needed to learn to manage his money better in order to live within his means. *See* PSI # 3 (Ex. 72 at 42-43). Yet, at the hearing in 2005 the individual testified that he had not taken any steps towards acquiring money management skills. Tr. at 103. While the individual is currently required to live on a budget as required by the terms of the Bankruptcy Plan, I only accorded neutral weight to this fact because the budget is court-imposed. In addition, the individual's decision to open a restaurant in his house in 1995 contributed to his financial plight. It appears from the record that the individual made some poor business decisions regarding this business venture, including the selection of the different sites for the business. The individual presented no evidence that he had a business plan or did market analysis before embarking on his venture, factors that might have augured in his favor.

In other administrative review hearing cases involving documented cases of financial problems, Hearing Officers have held "that once a pattern of financial irresponsibility has been established, it is the individual's burden to demonstrate a new pattern of financial responsibility." *See Personnel Security Hearing* (Case No. TSO-0217), <http://www.oha.doe.gov/cases/security/tso0217.pdf>; *Personnel Security Hearing* (Case No. VSO-0509), <http://www.oha.doe.gov/cases/security/vso0509.pdf>; *Personnel Security Hearing* (Case No. VSO-0108), 26 DOE ¶ 82,764 (1996) (affirmed by OSA, 1997).

¹² According to the Case Evaluation Sheet dated April 22, 2004, the LSO noted that the individual's family hardship included a period in 2003 when the individual's wife and daughter became ill and required extensive treatment. Ex. 5. At the hearing, the individual clarified that his financial difficulties did not stem from medical expenses incurred in connection with his wife and daughter's illness but from the overtime he did not work when he elected to spend more time with his family. Tr. at 96.

Based on the record before me, I find that the individual has not presented sufficient evidence to demonstrate a new pattern of financial responsibility.

As an initial matter, it has only been 15 months since the individual filed his most recent Bankruptcy Petition. I cannot evaluate whether the individual will be able to demonstrate a pattern of meeting his financial obligations until he emerges from the protection of the bankruptcy court in January 2009.¹³ After January 2009, the individual will need to demonstrate a lengthy pattern of sustaining a financially responsible lifestyle in order to mitigate the long-term security concerns associated with his past financial delinquencies. Even though the individual testified at the hearing that he hopes to get “into a program for money management so that . . . we can budget our money a lot better and use it more wisely,” I am skeptical whether the individual will follow through on his expressed intentions. Tr. at 104. For much of the past 22 years, the individual has provided assurances to the LSO that he would repay overdue creditors, would resolve his financial difficulties, and would live within his means. His extensive history of not following through on his expressed intentions causes me to doubt the individual’s ability or willingness to manage his money in a prudent manner. In the last analysis, however, not enough time has elapsed for me to gauge whether the individual will be successful in taking control of his financial affairs and meeting his financial obligations. I must therefore find that the security concerns associated with the individual’s long term pattern of financial problems have not been mitigated under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate all of the security concerns advanced by the LSO. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual’s access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: February 14, 2006

¹³ Inasmuch as the individual failed to make payments according to the terms of a Bankruptcy Plan connected with his 2003 Bankruptcy Petition, it is not clear to me that the individual will be successful in emerging from bankruptcy in 2009.